

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-04-DL-047
	)	
Andrews Tower Rental, Inc.	)	NAL/Acct. No.200432500006
Owner of Antenna Supporting Structure	)	
1058251 near Brownwood, Texas	)	FRN 0006-1394-63
Fort Worth, Texas	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** June 10, 2004

By the Enforcement Bureau, South Central Region, Dallas Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Andrews Tower Rental, Inc. (“Andrews Tower”), owner of antenna structure 1058251 near Brownwood, Texas, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for the willful and repeated violation of Section 17.50 of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Andrews Tower apparently liable for failure to clean and repaint its antenna structure to maintain good visibility.

**II. BACKGROUND**

2. Antenna structure number 1058251 is located near Brownwood, Texas. Andrews Tower is the registered owner of this structure. The structure's Antenna Structure Registration (“ASR”) specifies that the structure be painted.

3. On February 18, 2004 an agent from the Commission's Dallas Office inspected Andrews Tower's antenna structure number 1058251. The agent observed that the paint bands were faded, dull, and discolored. The paint band marking had deteriorated over time, such that the bands could not be distinguished at a distance of one-fourth of a mile from the structure. The deteriorated condition of the marking significantly reduced the antenna structure visibility. The agent made additional observations of the antenna structure on February 19 and 20, 2004.

4. On February 24, 2004 and March 3, 2004, the agent interviewed John Andrews, Executive Vice President, of Andrews Tower. Mr. Andrews stated they planned to repaint the tower after some restructuring of the tower was completed. Construction on the tower, however, was not scheduled to commence until after the spring storm season.

**III. DISCUSSION**

---

<sup>1</sup> 47 C.F.R. § 17.50

5. Section 17.50 of the Commission's Rules requires antenna structures requiring painting to be cleaned or repainted as often as necessary to maintain good visibility. On February 18, 2004 through February 20, 2004, Andrews Tower's antenna structure 1058251 near Brownwood, Texas had severely faded, dull and discolored paint, making the bands indistinguishable at a distance of one-fourth of a mile from the structure and resulting in poor visibility of the structure's obstruction markings.

6. Based on the evidence before us, we find Andrews Tower willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Section 17.50 of the Rules by failing to clean and repaint antenna structure number 1058251 to maintain good visibility.

7. Pursuant to Section 1.80(b)(4) of the Rules,<sup>4</sup> the base forfeiture amount for failure to comply with prescribed antenna structure markings is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> Andrews Tower Rental, Inc. is hereby NOTIFIED of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Rules by failing to clean and repaint its antenna structure to maintain good visibility.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Andrews Tower Rental, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

---

<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>3</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

11. The response, if any, must be mailed to Federal Communications Commission, 9330 LBJ Freeway, Suite 1170, Dallas, Texas 75243 within thirty days of the release date of this *NAL* and **MUST INCLUDE THE NAL/Acct. No.** referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Andrews Tower Rental, Inc., 1420 Layton Ave., Fort Worth, Texas 76117.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells  
District Director, Dallas Office, South Central Region,  
Enforcement Bureau

Attachment A

---

<sup>8</sup> See 47 C.F.R. § 1.1914.